



Citizenship of Children Sections 320 and 322 of the INA

**Presented by the Immigration and
Naturalization Service - ISD**

Law and Interim Regulation

- ★ Child Citizenship Act was signed into law by President Clinton on October 30, 2000, and became effective on February 27, 2001.
- ★ An Interim Rule was published on June 13, 2001, with comments due by August 13, 2001.

Final Regulation & Additional Guidance

- ★INS has requested an opinion from the Office of Legal Counsel at DOJ regarding applying the CCA to illegitimate children.
- ★The Final CCA Regulation will be published after this arrives.
- ★The Final Reg should also include the citizenship date of of IR4s.

Definitions

Biological Child in the CCA

INA 101(c)(1)

The term "child" means an unmarried person under 21 years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Definitions (cont.)

Adopted Children in the CCA

Section 101(b)(1)(E)(i)

A child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years.

Definitions (cont.)

Orphans in CCA

Section 101(b)(1)(F)(i)

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been

Definitions (cont.)

Section 101(b)(1)(F)(i) (cont.)

adopted abroad by a U.S. citizen and spouse jointly, or by an unmarried United States citizen at least 25 years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the U.S. for adoption by a U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence.

Definitions (cont.)

Section 101(b)(1)(E)(ii) and (F)(ii)

A child who: (I) is a natural sibling of a child described in clause (E)(i) or (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause; and (III) is otherwise described in such clause, except that the child was adopted while under the age of 18 years.

Definitions (cont.)

Section 101(b)(1)(G) a child, under the age of sixteen at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least 25 years of age--*et c.*, Once the Hague Convention is in force.



Section 320 of the INA

**Child Born Outside the United States and
Residing Permanently in the United
States; Conditions Under Which
Citizenship Automatically Acquired**

Eligibility

★A child (natural or adopted) born outside the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

Eligibility (cont.)

- ★ At least one of the child's parents is a citizen of the U.S., whether by birth or naturalization.
- ★ The child is under the age of 18 years.
- ★ The child is residing in the U.S. in the legal and physical custody of the citizen parent
- ★ pursuant to a lawful admission for permanent residence.

Application Process

★ Natural Child or Adopted Child

- ✓ File an N-600, Application for Certificate of Citizenship, with INS office in the United States having jurisdiction.
- ✓ The new N-600 has a two-fee structure. The higher fee is required for all applicants other than adopted children.
- ✓ The lower fee is required for all adopted children.

Adjudication Process

- ★ Upon approval, single A Certificate of Citizenship is issued
- ★ Date of citizenship is the first date on which all the requirements are met.

Adjudication Process (cont.)

★ For an IR-3 who accompanies the parent(s) into the United States, this will be presumed to be the date of entry.

Adjudication Process (cont.)

- ★ Children lawfully admitted as “IR-4s” who had not been adopted before immigrating will become citizens on the date of the full, final adoption in the United States by his or her U.S. citizen parent(s).

Adjudication Process (cont.)

★Children LAPR as “IR-4s” who had a full, final adoption in another country will be citizens retroactive to their LAPR if competent authority in their place of residence recognizes the validity of the foreign adoption.

Adjudication Process (cont.)

★Children LAPR as “IR-4s” who had a full, final adoption in another country will be citizens as of a full, final adoption here if competent authority in their place of residence does not recognize the foreign adoption.

Adjudication Process (cont.)

★ 8 CFR 320, the Instructions for the new N-600, and Policy Memo # 75 all stress that families do **NOT** have to resubmit documents that INS already has.

Adjudication Process (cont.)

★ Except in the rarest of cases, e.g., positive evidence of suspected fraud, **NO INTERVIEW** should be required for the issuance of a **Certificate of Citizenship** for children who were **IR-3s** or for adopted **IR-4s**.

Adjudication Process

(cont.)

8 CFR § 341.2 Examination upon application

(a)(1) *When testimony may be omitted.* An application received at a Service office having jurisdiction over the applicant's residence may be processed without interview if the Service officer adjudicating the case has in the Service administrative file(s) all the required documentation necessary to establish the applicant's eligibility for U.S. citizenship, et c.

Adjudication Process (cont.)

8 CFR § 341.7 Issuance of certificate

- (a) If the application is granted, a Certificate of Citizenship shall be issued and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning thereof, he or she shall take and subscribe to the oath of renunciation and allegiance, prescribed by part 337 of this chapter, before a member of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail.

Adjudication Process

(cont.)

Signature on Certificate of Citizenship

If the claimant is able to sign their full name, he or she should sign it themselves, regardless of age.

If, for any reason, the claimant is unable to sign his or her full name, it should be signed by a parent or guardian.

The signature should read “(name of claimant) by (name of parent or guardian)”.

If mailed, instructions to sign Certificate & pictures in this manner should accompany Certificate.

Future Process

★ We are working on developing a process wherein Certificates of Citizenship will automatically be issued instead of PRCs to children who are automatically citizens at time of LAPR.

Future Process (cont.)

★ This will **ONLY** be for children who have **NOT** already been processed for PRCs.

★ The TSC will issue Certificates to most IR-3s and some IR-2s

Future Process (cont.)

- ★ The Field Office that processes the adjustments will issue Certificates to some IR-7s and all of the rare IR-8s.
- ★ Federal Regulations must be published before this program can begin.



Section 322 of the INA

**Children Born and Residing Outside
the United States; Conditions for
Acquiring Certificate of Citizenship**

Eligibility

★ **A child (natural or adopted)
born outside the United States
becomes a citizen of the United
States through naturalization
when:**

Eligibility (cont.)

- ★ At least one parent is a U.S. citizen by birth or naturalization.
- ★ The child is under age 18.
- ★ The child is residing outside the U.S. in the legal and physical custody of the citizen parent, and is temporarily present in the U.S. pursuant to a lawful admission, and is maintaining such lawful status.

Eligibility (cont.)

★The U.S. citizen parent

- ✓has been physically present in the U.S. or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years; or
- ✓has a living citizen parent who has been physically present in the U.S. or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years.

Application Process

★ Natural Child or Adopted Child

- ✓ File an N-600K, Application for Citizenship and Issuance of Certificate Under Section 322, with INS office in U.S. where Interview is requested.
- ✓ The new N-600K has a two-fee structure. The higher fee is required for all applicants other than adopted children.
- ✓ The lower fee is required for all adopted children.

Application Process (cont.)

- ★ If eligibility is based on a citizen grandparent's residence in the United States - the CCA requires that the grandparent must still be a U.S. citizen and must still be alive at the time of adjudication.

Application Process (cont.)

★ Upon receipt, INS reviews application

- ✓ If the Application is not preliminarily approvable - rejected or a request for additional information is sent
- ✓ If the Application is preliminarily approvable - a G-56, General Call-In Letter, is sent. The following will be on the G-56 --

**N-600K has been preliminarily
approved.**

⌘ ***IMPORTANT NOTE*** ⌘

**Hopefully, Immediate
priority shall be give to
children approaching
their 18th birthday**

Interview

- ★ Child and parent must be physically present at the interview
- ★ Upon approval and administration of the oath, a single A certificate issued
- ★ Date of citizenship is the date the application is approved and the oath of allegiance is taken and subscribed to before INS officer



QUESTIONS?